IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2756 OF 2006

Manoj Lakhulal Chourasiya
and Ors. .. Applicants

Versus

State of Maharashtra .. Respondent

Mr.S.R.Chitnis with N.P.Mishra for applicants
Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 5th September 2006.

P.C.

. Perused the earlier orders passed by this

Court and more specifically the order dated 3rd August 2006, wherein the applicants' Advocate's statement is recorded that applicants would abide by all such requirements as are stipulated in the rules and regulations framed by the State and obtain requisite permissions and licences.

2. The applicants are apprehending arrest in connection with C.R.No.I-180 of 2006 registered at Ulhasnagar police station. Offences alleged are under section 420 read with 34 I.P.C. and under sections 4 and 5 of Prohibition of Gambling Act. F.I.R. is registered on 15th July 2006.

3. At the outset Mr.Pednekar, learned A.P.P. upon taking instructions makes a statement that offences under Prohibition of Gambling Act are bailable. As far as offences under I.P.C. are concerned, Mr.Pednekar, A.P.P. invites my attention to the agreement which is placed on record and the statement of the Police

Sub-Inspector, Mr.Abhale. He states that the show room from where the computer games are being seized, belong to a company in which the applicants are Directors. The person who is running the video parlour/cyber cafe, is a franchisee of the company belonging to the applicants. He submits that when the premises were raided and searched, the officer has noticed that some persons were playing games on the computer. The entire activity is nothing but gambling which is prohibited. That apart, as far as software is concerned for the same being utilised, dealt with and sold, appropriate permissions and licences are required which were not produced. In such circumstances, the offences have been registered. Learned A.P.P. has invited my attention to the prima facie observations of the learned trial Judge in the order passed on the anticipatory bail application of the applicant.

4. After perusing the application and the annexures thereto, it is apparent that on the application for anticipatory bail being rejected by the trial court on 21st July 2006, this Court has protected the applicants. Further, appropriate statements and undertakings have been recorded by this Court. The A.P.P. was also directed to file reply indicating material collected in the investigation against the present applicants. There is no reply filed by the A.P.P. However, as far as bailable offences are concerned, the application for anticipatory bail would not be maintainable. Insofar as offences alleged under section 420 I.P.C. is concerned, the role is only that the applicants are directors of a company which makes and prepares this software. That software is installed by co-accused Amarlal Chawla at his cyber cafe. Now the material including the computer sets have been seized already. Applicant's role is that of making and preparing

software. In such circumstances and when it is not pointed out that after seizure of the equipment and documents, custodial interrogation is necessary, then the applicants deserve to be protected. More particularly, because, it is not pointed out that if the applicants are enlarged on pre-arrest bail, they are not likely to cooperate with the investigation or would not be available to face the trial.

5. Since the applicants have attended the police station earlier and ready and willing to cooperate with the investigation, following order would serve ends of justice. Hence, the following order:-

i) In the event of the arrest of the applicants (1) Manoj Lakhulal Chourasia (2) Ramesh Lakhulal Chaurasiya and (3) Kailash Shrikishan Chaurasiya in connection with C.R.No.I-180 of 2006

registered with Ulhasnagar Police Station, the applicants shall be enlarged on bail in the sum of Rs.10,000 each with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will attend the Ulhasnagar police station once a week on every Saturday between 11.00 a.m. and 1.00 p.m. The applicants shall furnish their passports to the I.O., if any.

iii) Bail is granted subject to condition that the applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade him from disclosing such facts to the Court or to the police officer/ investigating agency. The applicants

shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicants only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)